

PROB. 12B
(7/93)

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

United States District Court

for the

DISTRICT OF HAWAII

MAY 15 2006
at 10 o'clock and 50 min. a.w.
SUE BEITIA, CLERK

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**

(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: CLAYTON K. KANAE

Case Number: CR 04-00339HG-01

Name of Sentencing Judicial Officer: The Honorable Helen Gillmor
Chief U.S. District Judge

Date of Original Sentence: 7/14/2005

Original Offense: FELON IN POSSESSION OF A FIREARM, in violation of 18 U.S.C.
§ 922(g)(1) and 924(a)(2), a Class C felony

Original Sentence: Ten (10) months imprisonment followed by three (3) years supervised released with the following special conditions: 1) That the defendant participate in a substance abuse program, which may include drug testing at the discretion and direction of the Probation Office; 2) That the defendant provide the Probation Office access to any requested financial information; 3) That the defendant shall submit his person, residence, place of employment, or vehicle to a search conducted by the U.S. Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other resident that the premises may be subject to search pursuant to this condition; and 4) That the defendant serve 2 months of community confinement, in a community corrections center such as Mahoney Hale, or in the alternative, participate in a substance abuse residential treatment program at the discretion and direction of the Probation Office.

Type of Supervision: Supervised Release

Date Supervision Commenced: N/A

PETITIONING THE COURT

[X] To modify the conditions of supervision as follows:

General Condition *That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than 8 valid drug tests per month during the term of supervision.*

Special Condition No. 4 *That the defendant serve up to 2 months at Ka Hale Ake Ola on the island of Maui, at the discretion and direction of the Probation Office.*

CAUSE

At this time, the subject is incarcerated at the Federal Detention Center serving his imprisonment term for the instant offense. He is scheduled to be released on 5/15/2006. Prior to his release, we respectfully recommend that the Court modify two conditions of supervised release as reflected above. Regarding the General Condition, with the United States v. Stephens, (9th Circuit 2005) ruling, the Probation Office is limited to three random tests outside of drug treatment. The subject has an extensive substance abuse history, including methamphetamine use while on bail release. With that being said, drug testing is the most reliable method for monitoring the subject's drug use. The purpose for the modification is so that the Probation Office could continue to conduct random drug testing at the rate of up to eight tests per month. This amount will allow the probation officer to fashion random drug testing designed to detect drug use while not allowing the subject to predict test dates.

Regarding Special Condition No. 4, upon the subject's release he is required to serve 2 months at Mahoney Hale, or in the alternative, participate in a residential substance abuse treatment program. However, due to the following factors, we respectfully recommend that the Court amend this condition to allow the subject to be released to an alternative structured living program on Maui, Ka Hale Ake Ola.

First, the subject is a lifelong resident of Maui where his family and house remain. Releasing to Mahoney Hale would be difficult for him to secure employment on Oahu for a short period of time. In addition, his drug treatment program on Oahu would be disrupted when he returns to Maui. Essentially, the subject's successful reintegration into the community could be hindered while at Mahoney Hale. Second, the subject is not appropriate for residential drug treatment due to his length of time being drug-free.

Lastly, we have concluded that a program on the island of Maui, Ka Hale Ake Ola (KHAO) Resource Center, would be an appropriate alternative. KHAO is a nonprofit organization funded by the Aloha United Way and State of Hawaii, Department of Human Services. New residents are eligible for temporary shelter and reside in a dormitory for up to 90 days. Within the first few days of entry, case managers are assigned to each resident and they are quickly referred to appropriate services to assist in their efforts to become independent. While in the temporary shelter, residents are not required to pay any rent and are provided three meals per day. Daily chores and attending KHAO educational classes are mandatory. Classes include Chemical Dependency, GED Class, Self Esteem, and Money Magic (credit and budgeting education). In addition, residents are encouraged to seek employment and save a portion of their monthly income in a savings account. KHAO is a clean and sober facility and residents are randomly drug tested.

After 90 days, residents who are compliant with program rules are eligible for KHAO transitional housing which is also on-site. Residents share either a studio, 1-bedroom, or 2-bedroom apartment unit with another resident at greatly reduced rent. Transitional housing has a 2-year limit so residents are encouraged to become self-sufficient and find permanent housing during this time. KHAO bills itself as a gateway for various resources for residents with diverse backgrounds. From substance abusers to individuals suffering from financial hardship, KHAO claims to be an excellent structured living program.


Providing that the subject is motivated, he will greatly benefit from being surrounded by a positive support network. This scenario will also allow the subject to remain close to his family and resources on Maui while remaining in a structured living program. This would be much more conducive to his successful reintegration into the community than going to Mahoney Hale for 2 months. The subject's attorney and the U.S. Attorney's Office have been notified of the proposed modification and believe this would be an appropriate alternative.

Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The subject waives his right to a hearing and to assistance of counsel. The subject agrees to the modification of the conditions of supervised release. The subject's attorney and the U.S. Attorney's Office have no objections to the modification.

Respectfully submitted by,


JONATHAN K. SKEDALESKI
U.S. Probation Officer


Approved by:


TIMOTHY M. JENKINS
Supervising U.S. Probation Officer

Date: 5/4/2006

THE COURT ORDERS:

- ☒ The Modification of Conditions as Noted Above
☐ Other


HELEN GILLMOR
Chief U.S. District Judge

5.15.06

Date

Received Fax : MAY 01 2006 8:10AM Fax Station : HP LASERJET 3200

05/01/2006 08:18 FAX

002/002

PROB 49
(5/06)**United States District Court****District of Hawaii****Waiver of Hearing to Modify Conditions
of Probation/Supervised Release and/or Extend Term of Supervision**

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

- ☐ To extend the term of supervision for years, for a total term of years.
☒ To modify the conditions of supervision as follows:

General Condition

That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than 8 valid drug tests per month during the term of supervision.

Special Condition No. 4

That the defendant serve up to 2 months at Ka Hale Ake Ola on the island of Maui, at the discretion and direction of the Probation Office.

Witness:


 JONATHAN K. SKEDELESKI
 U.S. Probation Officer

Signed:


 CLAYTON K. KANAE
 Supervised Releasee

5/1/2006
 Date